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FILED
AUG 11 1941
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 506

SYSTEM FEDERATION NO. 59 OF THE RAILWAY EMPLOYEES DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR,

Petitioner,

vs.

LOUISIANA & ARKANSAS RAILWAY COMPANY.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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OCTOBER TERM, 1941

No. 506

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vs.

LOUISIANA & ARKANSAS RAILWAY COMPANY.

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petition of SYSTEM FEDERATION NO. 59 OF THE RAILWAY EMPLOYEES DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR respectfully shows this Honorable Court:

A.

Summary Statement of the Matter Involved, With Questions Presented.

The Circuit Court of Appeals sustained the decision of the District Court, dismissing petitioner's amended complaint, because it failed to state a claim upon which relief

could be granted (119 F. (2d) 509; R. 85-98). The suit was one to enforce an award of the Second Division of the National Railroad Adjustment Board, that ordered the respondent to reinstate various of its shop craft employees, with pay for time lost, by reason of respondent's violation of seniority rules created by a contract of 1929, and/or by posted Rules of 1931 (R. 6-7, and 29-37).

As reasons for its action, the court stated that: (a) the Board was without jurisdiction, in that the employees had failed to reduce their claim to a "case" before some tribunal prior to June 21st, 1934 (119 F. (2d) 514; R. 94); (b) the award was too vague and uncertain, apparently because it required the parties to the dispute to check and name the employees entitled to relief (clearly a matter of record) (119 F. (2d) 514; R. 92-93); and (c) in any event, the charges of the complaint showed an abrogation of the 1929 contract, and that the complaining employees were not entitled to the benefits of the 1931 rules; that there was no claim made for damages arising out of the breach of the 1929 contract prior to its abrogation (119 F. (2d) 515; R. 97).

Believing the court misconceived the factual allegations, as well as the law, we summarize the averments of the complaint, refuting the court's conclusions in inverse order:

(c) By a collective bargaining contract of August 1st, 1929, respondent agreed to reduce and increase its forces in the order of the seniority of its employees (R. 13, 14, 36). It sought abrogation and revision of this contract (R. 14), and, after refusing to arbitrate, posted rules on February 9, 1931 to govern employment in its shops, which rules carried forward the identical seniority provisions of the 1929 pact (R. 15, 36). On September 1st, 1931, a bulletin signed by a subordinate foreman of respondent was

posted in its shops (R. 15). This instrument was addressed only to carmen, and their helpers, and contained a list of their names in order of seniority, as well as a statement that the seniority of "former employees" who had not worked under their classification in any twelve-month period "would be dropped" (R. 15). It was pointedly pleaded that both the notice seeking abrogation of the 1929 contract (R. 14, 16-17), and the abortive bulletin (R. 15-16) were insufficient to comply with the requirements of the Railway Labor Act of 1926 (45 U. S. C. A., para. 146, Sec. 6) as to notification and opportunity for conference before change of agreements. In fact, Respondent apparently conceded the invalidity of the bulletin, by omitting it from the rules it submitted the Board as governing from February 9th, 1931 to October 8th, 1937 (R. 32, 36).

The amended complaint names various employees and gives the date on which each was wrongfully taken and held out of service by Respondent (R. 7-10); some *before* any possible abrogation of the 1929 contract (R. 7-10, 11), others *after* promulgation of the February 9, 1931 rules, and before the September 1st, 1931 bulletin (R. 11-12), and some after September 1, 1931 (R. 8-10). Specific averments of violation of seniority rights accorded either by the 1929 contract, or the February 9th, 1931 rules (Para. IVA, R. 10-12 and 18) are followed by a prayer for an accounting by defendant to the employees named "on account of the facts herein set forth", judgment for the sums found to be due, and general relief (paras. b and e, R. 27). We sincerely believe the court inadvertently misquotes the record, in saying that no claim is being made for damages arising from breach of the contract of 1929 prior to its abrogation (119 F. (2d) 515; R. 97).

(b) Since the proper procedure would have been to refer the case back to the Board, if its award had been too in-

definite for enforcement, we postpone discussion of the court's holding on the sufficiency of fact findings.

(a) It is believed that the court's conception that the inclusion of "cases pending and unadjusted on June 21st, 1934", as "disputes" in the Railway Labor Act of 1934 (45 U. S. C. A., Sec. 153 (i)), operated to limit the jurisdiction of the Board to such classification, is wholly untenable. Yet the complaint satisfies even this rigid interpretation thus:

Notwithstanding the repeated requests of the wrongfully furloughed employees that they be permitted to return to work in accordance with their seniority rights vouchsafed by the 1929 contract, and carried forward into the 1931 rules (Para. IX, second para., R. 20), Respondent continued in its breach of contract; and in open violation of the Railway Labor Act of 1926 failed to recognize the accredited, or any other, representative of the employees (Para. IX, R. 20), or to provide or maintain channels through which labor disputes could be discussed or adjusted (Para. IX, R. 20). It would appear that the employees exhausted all means open to them to lodge a "case" with Respondent.

Would not the upholding of the opinion of the Circuit Court of Appeals mean that the jurisdiction of the Adjustment Board could best be defeated by a violation of law on the part of the carrier?

Following the chaos that resulted from Respondent's refusal to recognize representatives of its employees (R. 20), a collective bargaining contract of October 20th, 1937 was made (R. 16), immediately after which the present controversy was seasonably carried before the proper officials of Respondent, and then lodged with the Adjustment Board (R. 22). No contention is, or can be, made that the

proceedings before the Board were not regular, and its award was entered November 21st, 1938, but not obeyed (R. 36-7).

B.

Jurisdiction.

1. Jurisdiction exists perforce Title 28, U. S. C. A., Sec. 347, Subdivision A.

2. The date of the judgment to be reviewed is May 2, 1941 (R. 85, 98), but petition for rehearing was seasonably filed (R. 99-104), and denied on May 31st, 1941 (R. 105).

3. The decision of the Circuit Court of Appeals is one of first impression with respect to (a) the extent of the jurisdiction conferred on the National Railroad Adjustment Board by Congress (U. S. C. A., Title 45, Sec. 153, h and i); and (b) the minuteness of detail that must appear in the Board's award in order for it to be effective.

It is believed that in order to sustain the dismissal, the Circuit Court has unduly restricted the jurisdiction of the Board, as well as imposed over-exacting requirements as to the definiteness required in its awards. In addition to being in conflict with the *rationale* of applicable decisions of this Court, the decision below evidences the well-known disposition of many of the Federal Judges to unconsciously continue in the outworn belief, that it is their privilege and duty to substitute the Court's idea of what the law should be, for the Legislative declaration of what it is. Thus, the decision below will undoubtedly hamper the functioning of the National Railroad Adjustment Board with the result that it cannot accomplish all of the purposes for which it was created; it decides a question relating to the Construction of a Federal statute in this respect, that has not been, but should be, settled by this Court, so as to liberalize the

powers and functions of the Board. All of the above requires the exercise of the Court's jurisdiction herein.

4. Cases believed to sustain the Court's jurisdiction.

Generally on Sufficiency of Award of Administrative Boards and at Common Law:

Meeker v. *Lehigh Valley R. Co.*, 236 U. S. 412 at 427, 59 L. Ed., 644 at 656;
Mills v. *Lehigh Valley R. Co.*, 238 U. S. 473 at 481, 59 L. Ed., 1414 at 1418;
Grier, et al. v. *Grier*, 1 Dall. 173, 1 L. Ed., 87;
Lynn v. *Risberg*, 2 Dall. 180, 1 L. Ed., 339;
Lutz v. *Linthicum*, 11 Curtis, 58, 8 Peters, 165.

On the Point That the Specification of a Class as Being Included, Does Not Limit a Broader Jurisdiction Granted:

American Surety Co. v. *Marotta*, 287 U. S. 513, 517, 77 L. Ed., 466, 468;
Montello Salt Co. v. *State of Utah*, 221 U. S. 452, 464, 465, 55 L. Ed., 810, 814.

C.

Reasons Relied On for the Allowance of the Writ.

(1) The curtailment of the functioning of the National Railroad Adjustment Board, by limiting its jurisdiction solely to labor disputes that had been reduced to undetermined "cases" on June 21, 1934, or so limiting its power to handle disputes that arose prior to such date, was wholly unjustified by the Railway Labor Act of 1934 (45 U. S. C. A., Sec. 153, h and i). The provision for the means of handling disputes by the Board, "including cases pending and unadjusted on June 21st, 1934" (45 U. S. C. A., Sec. 153 (i)),

did not restrict its field of action to such cases; but constituted a broadening of the jurisdiction theretofore granted it over *all* disputes (45 U. S. C. A., Sec. 153 (h)), or an enumeration of a part of the genus (pp. 14-15, brief *post*).

(2) Where, as here, the Respondent prevented conference on, or possible adjustment of, a long pending labor dispute by refusing to recognize any representative of its employees, but the employees nevertheless made individual requests for adjustment, there was a "case" of labor dispute as contemplated by the Railway Labor Act of 1934 (45 U. S. C. A., Sec. 153 (i)). In holding the contrary, and rewarding the Respondent for so violating the spirit, if not the letter, of the Railway Labor Act of 1926 (45 U. S. C. A., Secs. 146-2, 6 *et seq.*), the Circuit Court of Appeals limited the jurisdiction of the Adjustment Board to instances where the carrier had sought to be co-operative, and denied its power where most needed, in the treatment of recalcitrants. (p. 16 *et seq.*, brief *post.*)

(3) The requirement that an award of the Adjustment Board must specifically find evidential rather than ultimate facts, and inferentially, that it may not require names and amounts due to be furnished subsequently, further unduly hinders the proper functioning of the Board. An award is certain which can be made certain from existing records or data, even at common law; The strongly needed modern trend is to interpret procedural requirements liberally, rather than strictly, whether they pertain to a court or an administrative board. (p. 17 *et seq.*, brief *post.*)

(4) The amended complaint stated a claim entitling the shop craft employees to relief by way of (a) damages for the breach of the contract of 1929 prior to February 9, 1931, and of the February 9, 1931 rules prior to October 20,

1937, irrespective of proceedings before the Board; and (b) the enforcement of the order of the Board. (p. 18 *et seq.*, brief *post.*) The theory of pleading announced by the Federal Rules of Civil Procedure requires trial, if relief could be granted on the claim stated, under any possible state of facts. (*Leimer* v. *State Mut. Life Assur. Co.*, 108 F. (2d) 302, 305). The violation of contract and rules was bluntly alleged, followed by a prayer for damages on account thereof (pet. p. 3, *ante*).

(5) Not only will the Circuit Court of Appeals opinion deprive the affected employees of the relief sought in the present case, but by wrongfully taking their seniority from them, it will prevent many from receiving a pension under the Railroad Retirement Act of 1937 (45 U. S. C. A., Sec. 228a, (d)).

In all of the above respects, the Circuit Court of Appeals so far departed from the accepted course of judicial proceedings, and common justice, as to call for review by this Court.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 9583, SYSTEM FEDERATION NO. 59 OF THE RAILWAY EMPLOYEES DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR, APPELLANT, VS. LOUISIANA AND ARKANSAS RAILWAY COMPANY, APPELLEE, and that the said judgment of said United

States Circuit Court of Appeals may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just and your petitioner will ever pray.

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